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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA
6 RENO, NEVADA

7 DYSON FOURNESS AND VIRGINIA,) 3:10-CV-40-ECR-RAM
8 FOURNESS,)
9)

9 Plaintiffs,)

10 vs.)

Order

11 MORTGAGE ELECTRONIC REGISTRATION)
12 SYSTEM, INC.; ROBERT V. BUDHWA;)
13 FIELDSTONE MORTGAGE COMPANY;)
14 NATIONAL DEFAULT SERVICING CO.;)
15 HOME EQ SERVICING; AND DOES I-X)

14 Defendants.)
15)
16)

17 Plaintiffs are homeowners who claim to be victims of an
18 unlawful and wrongful foreclosure initiated by Defendants.

19 Now pending before the Court is Defendants' motion to dismiss
20 action for failure to timely amend and delay in prosecution (#15)
21 brought pursuant to Federal Rule of Civil Procedure 41(b). The
22 motion is ripe, and we now rule on it.

23
24 I. Background

25 On January 15, 2010, Plaintiffs filed suit in state court. On
26 January 21, 2010, Defendant removed the action (#1) to this Court,
27 invoking our diversity jurisdiction.
28

1 On December 6, 2010, we granted (#14) Defendants motion to
2 dismiss (#10). We further granted Plaintiffs leave to file an
3 amended complaint within twenty-one (21) days. Over a year later,
4 Plaintiffs have yet to file.

5 On April 12, 2011, Defendants filed a motion to dismiss action
6 for failure to timely amend and delay in prosecution (#15) pursuant
7 to Federal Rule of Civil Procedure 41(b). Plaintiffs did not
8 respond.

9 10 **II. Discussion**

11 Federal Rule of Civil Procedure 41(b) provides that "[i]f the
12 plaintiff fails to prosecute or to comply with these rules or a
13 court order, a defendant may move to dismiss the action or any claim
14 against it." FED. R. CIV. P. 41(b). With regard to a plaintiff's
15 failure to amend a complaint, "resources continue to be consumed by
16 a case sitting idly on the court's docket. The failure of the
17 plaintiff eventually to respond to the court's ultimatum - either by
18 amending the complaint or by indicating to the court that it will
19 not do so - is properly met with the sanction of a Rule 41(b)
20 dismissal." Edwards v. Marin Park, Inc., 356 F.3d 1058, 1065 (9 h
21 Cir. 2004). As was the case with the plaintiff in Edwards,
22 Plaintiffs here have failed to file an amended complaint, nor have
23 they indicated that they will not do so. In fact, Plaintiffs have
24 not taken any action in this case since before the Court's order
25 (#14) dismissing the complaint and granting them leave to amend.
26 For this reason, the case must be dismissed.

1 Furthermore, Plaintiffs have consented to the granting of the
2 instant motion (#15) by failing to respond to it. See Local Rule 7-
3 2(d) ("The failure of an opposing party to file points and
4 authorities in response to any motion shall constitute a consent to
5 the granting of the motion.").

6
7 **III. Conclusion**

8 Plaintiffs have not filed an amended complaint within twenty-
9 one (21) days of the Court's previous order (#14) and have otherwise
10 failed to prosecute the case. This action must therefore be
11 dismissed.

12
13 **IT IS, THEREFORE, HEREBY ORDERED THAT** Defendants' motion to
14 dismiss action for failure to timely amend and delay in prosecution
15 (#15) is **GRANTED**.

16
17 The Clerk shall enter judgment accordingly.

18
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20 DATED: March_16, 2012.

21 
UNITED STATES DISTRICT JUDGE